THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 25043 of 1995

Dated: 24.11.2006

Between:

Primary Agricultural Cooperative
Credit Society Limited, Doopally,
Nizamabad

… Petitioner

AND

Naseem Khan
And another.

… Respondents

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 25043 of 1995

ORDER:-

The order of the Labour Court-II, Hyderabad in M.P.No.21 of 1992 (M.P.No.149 of 1989 old) is under challenge in this writ petition. The first respondent approached the 2nd respondent Labour Court claiming payment of subsistence allowance during the suspension period. The petitioner was admittedly suspended on the allegation that he, as a salesman was responsible for missing of certain fertilizer bags. The petitioner remained ex parte before the Labour Court and on 6.4.1995 under the impugned order, the Labour Court has passed an order allowing the application of the first respondent. The record reveals that this Court has granted stay in the writ petition and Writ Appeal filed by the first respondent questioning the order of stay was dismissed. The fact, therefore, remains that no part of the amount as directed to be paid under the impugned order has been paid to the first respondent.

Sri N.Krishna Rao, the learned counsel for the petitioner submitted that the impugned order is misconceived for the reason that as far back as 30.12.1987 itself, the first respondent was removed from service. The counsel submits that as the first respondent refused to receive this order, it was affixed on the door of his house and till today the first respondent has not challenged the termination order.

Sri A.K.Jayaprakash Rao, the learned counsel for the first

respondent however disputed this submission of the learned counsel for the petitioner and he states that so far, his client has not received the order of removal.

Having regard to the rival contentions, I am of the view that the question whether the petitioner passed order of removal and whether such an order was affixed on the door of the first respondent's house are all matters which fall in the realm of disputed questions of fact. This Court cannot therefore go into those disputed questions. Instead, I feel it appropriate that the parties are relegated to the Labour Court. A perusal of the order of the second respondent shows that the Labour Court has not given any reasons for passing the impugned order except a cryptic statement that the amount claimed by the first respondent is amply probablised by Exs.W1 to Ex.W3. The learned counsel for the first respondent says that as the petitioner failed to file any counter, the Labour Court is justified in allowing the petition as the first respondent's claim is not disputed by the petitioner. The learned counsel for the petitioner states that as the-then President of the petitioner colluded with the first respondent and failed to give appropriate instructions to the counsel, the latter has not filed counter. The allegation of collusion is not supported by any material and I am unable to countenance such a contention being made. Had the petitioner been diligent in contesting the claim and bringing to the notice of the Labour Court that the services of the first respondent were already terminated, this litigation would well have been avoided. By the conduct of the petitioner the first respondent is made to face the litigation for more than 11 years.

I therefore deem it appropriate to remit the matter to the Labour Court for fresh consideration to decide whether the first respondent's services were terminated as being claimed by the petitioner in this writ petition. The Labour Court shall give liberty to both the parties to lead evidence on this issue and decide the matter. However, I feel it

appropriate to impose costs on the petitioner for its lack of diligence in pursuing the litigation causing great inconvenience to the first respondent. The petitioner shall pay a sum of Rs.3,000/- (rupees three thousand only) as costs to the first respondent within a period of three weeks from today. On proof of payment of such costs, the Labour Court shall re-enquire into the matter. If the petitioner fails to pay the costs, the order of the Labour Court impugned in this writ petition stands confirmed.

With the above observation, the writ petition is disposed of. No order as to costs.

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24.11.2006.

mdaa